

NORTH AMERICAN TITLE INSURANCE COMPANY

**929 Broadway,
Denver Colorado, 80203**

NAIC COMPANY CODE 50130

**MARKET CONDUCT EXAMINATION REPORT
as of December 31, 2002**

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

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September 10, 2003

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of North American Title Insurance Company Title Insurance business, has been conducted. The Company's records were examined at its Colorado Agency Office, 929 Broadway, Denver, CO. 80203.

The examination covered a one-year period from January 1, 2002 to December 31, 2002.

A report of the examination of North American Title Insurance Company is, herewith, respectfully submitted.

James T. Axman, CIE

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Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF THE
NORTH AMERICAN TITLE INSURANCE COMPANY**

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COMPANY PROFILE

North American Title Insurance Company (the “Company”) is a stock company and was incorporated on September 18, 1958, as Southern Counties Title Insurance Company. In 1991, North American Asset Development Corporation (NAADC), parent holding company for North American Title Company and related entities, purchased one-half of the issued and outstanding shares of the Company from First American Title Insurance Company. On December 30, 1991, its name was changed to North American Title Insurance Company (NATIC). In 1999, North American Asset Development Corporation acquired the one-half shares of stock owned by First American. NAADC now owns all of the issued and outstanding shares of stock of the company

In December 1994, the company became licensed in the state of Colorado.

The Company home office is located in Walnut Creek, California.

*As of the calendar year 2002 the Company had reported premium in Colorado of \$12,100,000 for Title Insurance, representing a 3.51 % market share in Colorado.

*Data as reported in the Colorado Insurance Industry Statistical report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Title Insurance law. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of underwriting and claims files that were systematically selected by using Audit Command Language (ACL) software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Title Insurance issues and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations
2. Sales and Marketing
3. Underwriting
4. Rating
5. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Title Insurance Sales & Marketing, Underwriting, Rating, and Claims practices to determine compliance with the Colorado insurance law outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-4-404.5	Rating plans-P&C type II insurers-rules and regulations
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-11-101.	Short title.
Section 10-11-102.	Definitions.
Section 10-11-103.	Compliance with article required.
Section 10-11-104.	Corporate form required.
Section 10-11-105.	Financial requirements prior to the article.
Section 10-11-106.	Determination of insurability required.
Section 10-11-107.	Powers.
Section 10-11-108.	Prohibitions.
Section 10-11-109.	Unearned premium reserve.
Section 10-11-110.	Amount of unearned premium reserve-release.
Section 10-11-111.	Reserve for unpaid losses and loss expense.
Section 10-11-112.	Net retained liability.
Section 10-11-113.	Power to reinsure.
Section 10-11-114.	Legal investments and admitted assets.
Section 10-11-115.	Prior investments.
Section 10-11-116.	Title insurance agents licensed.
Section 10-11-117.	Title insurance agents-certain names prohibited.
Section 10-11-118.	Title insurance.
Section 10-11-119.	Laws applicable.
Section 10-11-120.	Corporate existence preserved.
Section 10-11-121.	Application of article-other laws applicable.
Section 10-11-122.	Title commitments.
Section 10-11-123.	Notification of severed mineral estates.
Amended Regulation 3-5-1	Title Insurance
Regulation 1-1-7	Market Conduct Record Retention
Regulation 5-1-10	Rate and Rule filing regulation

Contract Forms and Endorsements

The following Title Insurance forms and endorsements were reviewed for compliance applicable to the period under examination:

Title	Form
Restrictions, etc. Improved land and Deletion of Standard Exceptions 1-4 Family Dwellings	100
Environmental Protection (Only for Residential Property)	140.1
ALTA Condominium Endorsement	115.1
ALTA Planned Unit Development	115.2
Mineral Rights, Damage to Improvements	100.30
Variable Rate Mortgage (ALTA 6)	110.7
FNMA-7 year Balloon Mortgage	122.8
Inflation (Only for use with ALTA Plain Language Policy)	130.3
Variable Rate Mortgage (ALTA 6.2)	110.8
Inflation (ALTA Owner's Policy)	130.3M
Designation of Improvements Improved Land	116 IMP
ALTA Loan Policy Jacket	6056.92
ALTA Owners Policy	6402.92
ALTA Plain Language Policy	6341

Sales and Marketing

For the period under examination, the examiners reviewed advertising and promotional materials provided by the Company.

Population	Sample Size	Percentage to Population
66	66	100%

Underwriting/Rating

The examiners reviewed the rate and fee filings, submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of title policies and closing fees, rated by county, type of policy to determine compliance with filed base rates and fees.

Population	Sample Size	Percentage to Population
20,630	100	1%

Claims

For the period under examination, the examiners randomly selected the following sample to determine compliance with claims handling practices.

Population	Sample Size	Percentage to Population
132	50	38%

EXAMINATION REPORT SUMMARY

The examination resulted in two (2) issues arising from the Company's apparent failure to comply with Colorado insurance law that govern all Title Insurance Companies operating in Colorado. These issues involved the following categories:

Rating:

In the area of Rating, one (1) compliance issue is addressed in this report. Issues arise from Colorado insurance law requirements dealing with the rating and calculating of title insurance premium and closing fees. The issues in this phase are identified as follows:

- Failure to properly charge and calculate the scheduled rate/premium or fee or out of pocket expenses for a specified title or closing and settlement service, or a policy of title insurance.

It is recommended that the Company review its rating and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

Claim Practices:

In the area of claim practices, one (1) compliance issue is addressed in this report. Issues arise from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, handling practices, documentation, investigation, denials, and the timeliness of claim payments. The issue in this phase is identified as follows:

- Failure, in some cases, to promptly acknowledge title claims.

It is recommended that the Company review its claim handling practices and make necessary changes to ensure future compliance with the Colorado insurance law applicable to the issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

NORTH AMERICAN TITLE INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

RATING

Issue A: Failure to properly charge and calculate the scheduled rate/premium or fee or out of pocket expenses for a specified title or closing and settlement service, or a policy of title insurance.

Section 10-3-1104, C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-404.5, C.R.S., Rating plans - property and casualty type II insurers - rules and regulations states, in part:

(1) The commissioner may promulgate rules and regulations for type II insurers which establish reasonable standards for rating plans, including experience rating plans, schedule rating plans, and expense reduction plans, and which are designed to modify rates in the development of premiums for individuals risks insured in the property and casualty insurance market. Such rules and regulations may permit recognition of expected differences in loss and expense characteristics and shall be designed so that such plans are reasonable and equitable in their application and are not unfairly discriminatory. Such rules and regulations shall not prevent the development of new rating methods which would otherwise comply with this part 4. The rules and regulations may establish maximum charges against and credits to the experience rating of an insured that may result from the application of a rating plan. The rules and regulations may encourage the use of loss control programs, safety programs, and other methods of risk management and may require insurers to maintain documentation of the basis for the charges and credits applied under any plan. The rules and regulations may also require the rating plans to include merit rating to the extent feasible.

Colorado Amended Regulation 3-5-1, Title Insurance, promulgated under the authority of 10-1-109, 10-3-1110, and 10-4-404(1), C.R.S., states, in part:

Section 5. Rules Regarding Standards Of Conduct For Title Insurance Entities

9. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.

Colorado Regulation 5-1-10. Rate and Rule Filing Regulation as promulgated under the authority of 10-1-109, 10-4-401 and 10-4-404 states, in part:

B. RATE AND RULE FILING REQUIREMENTS.

1. Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The following chart illustrates the significance of error versus the population and sample examined:

Title insurance policies/commitments/settlement statements

Population	Sample Size	Number of Exceptions	Percentage to Sample
20,630	100	7	7%

An examination of one-hundred (100) policies/commitments and settlement statements representing approximately 1% of those policies/commitments and settlement statements issued by the Company during the examination period, showed seven (7) exceptions (or 7% of the sample) containing nine (9) instances wherein the Company failed to charge the correct title premium, closing and settlement fee, or courier fee in accordance with filed rates as required by the Colorado insurance law.

Some files contained more than one (1) error. However, to maintain sample integrity, each file was considered as a singular exception regardless of the total instances contained within the file.

The nine (9) instances are described as follows:

INCORRECT TITLE PREMIUM CHARGED

One (1) exception was due to the Company failing to readjust the basic rate on the title commitment to reflect the change in policy amount as reflected on the settlement statement.

One (1) exception was due to charging an incorrect lenders coverage premium.

CLOSING AND SETTLEMENT FEES

Five (5) exceptions were due to charging incorrect settlement/closing fees for the settlement period examined. The Company failed to use the closing fees on file that were applicable at the time of closing.

One (1) exception was due to an incorrect wire transfer fee charged.

OUT OF POCKET EXPENSES

One (1) exception was due to an incorrect courier fee charge.

Recommendation #1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 10-4-404.5, C.R.S. and Amended Regulation 3-5-1 and Regulation 5-1-10. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its procedures related to the accuracy of title commitment charges, settlement/closing fees, and courier fee charges and implemented necessary changes in order to ensure compliance with the Colorado insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS PRACTICES

Issue B: Failure, in some cases, to promptly acknowledge title claims.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(II) Failing *to acknowledge* [emphasis added] and act reasonably promptly upon communications with respect to claims arising under insurance policies;

The following chart illustrates the significance of error versus the population and sample examined:

Title insurance claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
132	50	4	8%

An examination of fifty (50) claims representing approximately 38% of those claims received by the Company during the examination period showed four (4) exceptions (or 8% of the sample) wherein the Company failed to provide an acknowledgement within thirty (30) days to claims.

The Company has its own internal manual guideline on this subject, which is stated in part:

MANUAL FOR THE HANDLING OF TITLE INSURANCE CLAIMS AND ITIGATION

II. Receipt and Investigation of Claims

"Upon receipt of a notice of claim, the Corporate Office will, as soon as practicable, but in no event later than fifteen (15) calendar days from the receipt of the claim, acknowledge to the claimant the receipt of the claim.

The Company also based its guideline on the California law governing prompt acknowledgement which is also 15 days, which is derived from a complaint regulation as several states adopted in 1994.

Recommendation #2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling practices regarding prompt acknowledgement of a claim and implemented necessary changes in order to ensure compliance with the Colorado insurance law.

Summary of Recommendations**NORTH AMERICAN TITLE INSURANCE COMPANY**

<u>ISSUE</u>	<u>REC NUMBER</u>	<u>PAGE NUMBER</u>
Rating		
Issue A: Failure to properly charge and calculate the scheduled rate/premium or fee or out of pocket expenses for a specified title or closing and settlement service, or a policy of title insurance.	1	17
Claims		
Issue B: Failure, in some cases, to promptly acknowledge title claims.	2	20

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Participated in this examination and in the preparation of this report